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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF MONTANA
9 GREAT FALLS DIVISION

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13) CR-16-43-GF-BMM
14 versus)
15)
16 DEBORAH JOY DURAND,)
17)
18 Defendant.)

19 TRANSCRIPT OF BENCH TRIAL PROCEEDINGS

20 VERDICT

21 BEFORE THE HONORABLE BRIAN M. MORRIS
22 UNITED STATES DISTRICT COURT JUDGE
23 FOR THE DISTRICT OF MONTANA

24 Charles N. Pray Courtroom
25 Missouri River Federal Courthouse
United States District Court Great Falls
125 Central Avenue West
Great Falls, MT 59404

August 24, 2017
4:00 p.m.

Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

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PROCEEDINGS

(Open court)

(Defendant present)

(Proceedings began at 4:05 p.m.)

THE BAILIFF: The United States District Court is again in session.

THE COURT: Please be seated. Madam clerk, please call the next case on the Court's calendar.

CLERK OF COURT: This Court will now conduct a bench trial in Criminal 16-43 of the Great Falls Division, Judge Morris, United States of America versus Deborah Joy Durand.

THE COURT: Good afternoon, Mr. Weldon.

MR. WELDON: Good afternoon, Your Honor.

THE COURT: I haven't seen enough of you this week.

MR. WELDON: Yes, I figured you would say that, Your Honor.

THE COURT: Good afternoon, Mr. Arvanetes.

MR. ARVANETES: Good afternoon.

THE COURT: Good afternoon, Ms. Durand.

THE DEFENDANT: Good afternoon, sir.

THE COURT: All right. As I promised yesterday, I have a verdict in this matter.

The trial began on August 21st of 2017, and ran through

1 August 23rd of 2017. I've considered the evidence presented
2 at trial and am prepared to rule.

3 The Indictment charged Ms. Durand with four crimes:

4 Count I, making a false statement relating to Federal
5 Workers' Compensation benefits, in violation of Title 18,
6 United States Code Section 1920;

7 Count II, wire fraud, in violation of Title 18, United
8 States Code Section 1343;

9 Count III, making a false or fraudulent claim relating to
10 Federal Workers' Compensation benefits, in violation of Title
11 18, United States Code Section 287;

12 And Count IV, theft of government property, in violation
13 of Title 18, United States Code Section 641.

14 The Indictment also asserted a criminal forfeiture
15 allegation against Ms. Durand, pursuant to Title 18, United
16 States Code Section 981(a)(1), Section 9829(a)(4), and 28
17 U.S.C. Section 2461(c).

18 The government sought a personal judgment money --
19 personal money judgment, excuse me, against Ms. Durand.

20 With respect to Count I. In order for Ms. Durand to be
21 found guilty of having made a false statement related to
22 Workers' -- Federal Worker's Compensation benefits, as charged
23 in Count I of the Indictment, the government must prove each
24 of the following elements beyond a reasonable doubt:

25 That, first, Ms. Durand knowingly and willfully made a

1 false statement or report to the Department of Labor/Offices
2 -- Office of Workers' Compensation programs;

3 Second, the false statement or report was made in
4 connection with an application for or receipt of Federal
5 Worker's Compensation benefits;

6 and, Third, her false statement or report was material.

7 For purposes of Count I, a statement or report is false
8 if it is untrue when made, and the person making it knows it
9 is untrue.

10 A defendant acts knowingly if the defendant is aware of
11 the act and does not act through ignorance, mistake, or
12 accident.

13 A defendant acts willfully if the defendant acts
14 deliberately and with knowledge that her statement was untrue.

15 A material fact is an important fact that could influence
16 a decision of the Department of Labor/Office of Workers'
17 Compensation programs, and a material fact is not some
18 unimportant or trivial fact.

19 The heart of this crime alleges an attempt to influence
20 the Office of Workers' Compensation program by willfully
21 making false statements or reports concerning a material fact.
22 The government does not have to prove that anyone was actually
23 influenced or misled.

24 With respect to Count II. In order for Ms. Durand to
25 be found guilty of wire fraud, as charged in Count II of the

1 Indictment, the government must prove each of the following
2 elements beyond a reasonable doubt:

3 First, Ms. Durand knowingly devised a scheme or plan to
4 defraud, or a scheme or plan for obtaining money or property
5 by means of false or fraudulent pretenses, representations or
6 promises, or omitted facts. Deceitful statements or
7 half-truths may constitute false or fraudulent
8 representations;

9 Second, the statement made or facts admitted as part of
10 the scheme were material; that is, they had a natural tendency
11 to influence or were capable of influencing a person to part
12 with money or property;

13 Third, Ms. Durand acted with the intent to defraud; that
14 is, the intent to deceive or cheat;

15 and, Fourth, Ms. Durand used or caused to be used an
16 interstate wire communication to carry out, or attempt to
17 carry out an essential part of the scheme.

18 In determining whether a scheme to defraud exists, the
19 Court may consider, not only the defendant's words and
20 statements, but, also, the circumstances in which they were
21 used as a whole.

22 To convict a defendant of wire fraud based on an omission
23 of a material fact, the Court must find that the defendant had
24 a duty to disclose the omitted fact arising out of a
25 relationship of trust. That duty can arise either out of a

1 formal fiduciary relationship, or an informal trusting
2 relationship, which one party acts to the benefit of another
3 and induces the trusting party to relax the care and vigilance
4 in which it would ordinarily exercise.

5 A defendant caused an interstate wire communication to be
6 used when a defendant knows that some wire communication would
7 be used in the ordinary course of business, or the defendant
8 reasonably can perceive such use.

9 Count III. In order for Ms. Durand to be found guilty of
10 making a false claim related to Workers' Compensation
11 benefits, as charged in Count III of the Indictment, the
12 government must prove each of the following elements beyond a
13 reasonable doubt:

14 First, Ms. Durand knowingly presented a false claim
15 against the United States, to an agency of the United States;

16 Second, the claim was based on a false or fraudulent
17 material fact;

18 and, Third, Ms. Durand acted intentionally and knew that
19 the claim was false and fraudulent.

20 For purposes of Count III, a claim is false or fraudulent
21 if it is untrue when presented, and the person presenting the
22 claim knows that it is untrue. The government does not have
23 to show that the government agency was, in fact, deceived or
24 misled.

25 A misrepresentation is material if it contains a material

1 fact that it's false. A material fact is an important fact
2 that could influence a decision of the Department of
3 Labor/Office of Workers' Compensation program. A material
4 fact is not some unimportant or trivial fact.

5 Count IV. In order for Ms. Durand to be found guilty of
6 theft of government property as charged in Count IV of the
7 Indictment, the government must prove each of the following
8 elements beyond a reasonable doubt:

9 First, Ms. Durand knowingly stole money with the
10 intention of depriving the owner of the use or benefit of the
11 money;

12 Second, the money belonged to the United States;

13 and, third, the value of the money was more than \$1,000.

14 Burden of proof. The government bears the burden of
15 proof of each of these elements of the charged offenses beyond
16 a reasonable doubt.

17 The government's case. The government's evidence with
18 respect to the charges in Counts I, II, III, and IV of the
19 Indictment consisted of witness testimony and numerous
20 exhibits.

21 The government presented Kathy Simmons, Doctor David
22 Strausser, Adrienne Taylor, Traci Wallace, Doctor James Hood,
23 Sonja Drescher, Johnathan Drescher, Craig Dunn, Carlyne Bowi,
24 Special Agent Ryan Haywood, Special Agent Sara Spane, Jordan
25 Vantine, Kimberly Snyder, and Special Agent Joseph Boynton.

1 Did I forget anyone, Mr. Weldon?

2 MR. WELDON: Not that I can think of, Your Honor.

3 THE COURT: All right.

4 The defendant's case. Mr. Durand, through her lawyers,
5 cross-examined the government's witnesses. Ms. Durand also
6 presented witness testimony.

7 Ms. Durand presented testimony from Doctor John Ellis,
8 Jamie Gipe, Brad Harris, and Ms. Durand also testified,
9 herself. Ms. Durand also presented a number of exhibits.

10 Trial stipulations. The Court also received two trial
11 stipulations; Document Number 54, and Document Number 81. The
12 stipulation in Document 84 -- 54, excuse me, related to the
13 charge of wire fraud in Count II of the Indictment.

14 The parties stipulated that the government had proven
15 beyond a reasonable doubt that Ms. Durand had caused
16 interstate wire communications to occur "by way of wire
17 deposits, phone calls, faxes, or other electronic
18 submissions," to and from Great Falls, Montana, and to and
19 from Denver, Colorado, and elsewhere.

20 In Document 81, the parties stipulated that the record
21 did not contain any evidence that Ms. Durand had a medical
22 appointment or that Ms. Durand had picked up a medical
23 prescription on any of the dates described in Document 81.

24

25

(Discussion off the record.)

1
2 THE COURT: (Viewing documents) Count I. With
3 respect to Count I, the government's evidence established that
4 beginning on or about February 25th, 2013, and continuing
5 until on or about July 26th, 2014, Ms. Durand, while residing
6 in Montana and elsewhere, knowingly and willfully made
7 material false statements in connection with her application
8 for and receipt of Federal Workers' Compensation benefits.
9 The amount of benefits falsely obtained by Ms. Durand exceeded
10 \$1,000.

11 Ms. Durand made false statements to Doctor James Hood in
12 July 2008 regarding her physical abilities. Ms. Durand stated
13 that she could not perform a number of physical activities
14 that she could, in fact, perform. Ms. Durand made the false
15 statements knowingly and willfully.

16 Ms. Durand's neighbors, Sonja and Johnathon Drescher, had
17 observed Ms. Durand engage in numerous physical activities
18 between 2008 and 2010 that exceeded the physical limitations
19 reported by Ms. Durand to Doctor Hood.

20 The neighbors observed Ms. Durand jogging, riding horses,
21 lifting hay bales, clearing her property, cutting trees with a
22 chain saw, digging post holes, moving plants, mowing the yard,
23 or dragging trash cans.

24 Special Agent Ryan Haywood conducted video surveillance
25 of Ms. Durand at her home in November of 2007 through January

1 of 2008. The video shows Ms. Durand engaging in a number of
2 physical activities around her home, such as mowing of the
3 lawn, moving trash cans, and attending to her animals.

4 The false statements made by Ms. Durand to Doctor Hood
5 were material, Doctor Hood determined that Ms. Durand was
6 totally disabled based upon Ms. Durand's false statements.

7 The Department of Labor/Office of Workers' Compensation
8 program placed Ms. Durand on the Periodic Rolls based upon her
9 alleged total disability. The Department of Labor paid
10 Federal Workers' Compensation benefits to Ms. Durand based
11 upon her alleged total disability.

12 The Department of Labor paid Workers' Compensation
13 benefits to Ms. Durand from the time period of February 25th,
14 2013, through July 26th, 2014. The Workers' Compensation wage
15 benefits paid out during this time period totaled
16 approximately \$43,953.54.

17 Count II. With respect to Count II, the government was
18 required to prove that Ms. Durand knowingly devised a scheme
19 or plan to obtain money by false or fraudulent means, that the
20 statements made or facts submitted were part -- as part of the
21 scheme were material, that Ms. Durand acted with the intent to
22 defraud, and that Ms. Durand used or caused to use interstate
23 wire communications to carry out, or attempt to carry out an
24 essential part of the scheme.

25 The government's evidence establish that beginning on or

1 about February of 2006, and continuing thereafter, until on or
2 about May of 2016, Ms. Durand, while residing in Montana,
3 Texas, Idaho, Utah, and elsewhere, falsely and fraudulent
4 claimed to have injuries that prohibited her from working for
5 the United States Postal Service in any capacity.

6 Her false and fraudulent claims caused Ms. Durand to
7 receive numerous benefits from the Department of Labor/Office
8 of Workers' Compensation programs, including wages, medical
9 expenses, and travel vouchers.

10 The government's evidence further established that Ms.
11 Durand used or caused to use interstate wire communication to
12 carry out an essential part of the scheme.

13 The government's evidence with respect to Count II
14 includes the evidence discussed previously with respect to
15 Count I; the government's evidence also showed that beginning
16 on or about February of 2006, and continuing through March of
17 2014, Ms. Durand had submitted numerous false travel vouchers
18 seeking payments for mileage on dates for which there was no
19 record of medical appointments, and no record of medical
20 prescriptions to be picked up. The false travel vouchers were
21 material, as they induced the government to make travel
22 reimbursement payments to Ms. Durand.

23 The government's evidence with respect of Count II also
24 included evidence regarding an undercover kayaking trip.
25 Agents of the Office of Inspector General arranged an

1 | undercover kayak trip in July of 2015 in an attempt to
2 | identify whether Ms. Durand was being truthful in her claims
3 | that she was unable to work for the Postal Service in any
4 | capacity.

5 | Ms. Durand and the undercover agents participated in a
6 | three-day, two-nights sea kayaking tour in the San Juan
7 | Islands in the state of Washington, beginning on July 26th,
8 | 2015.

9 | Ms. Durand and her partner paddled a tandem sea kayak for
10 | approximately six to eight hours per day. Ms. Durand and her
11 | partner paddled approximately ten to twelve miles per day.

12 | The video depicts Ms. Durand using both arms to paddle
13 | her kayak, carrying equipment, and setting up and taking down
14 | her campsite.

15 | The video shows Ms. Durand displaying full use of her
16 | back, arms, and hands during the trip. According to witness
17 | testimony, one evening Ms. Durand participated on a hike after
18 | paddling all day. The hike involved some climbing.

19 | The guide of the kayaking trip, Jordan Vantine, testified
20 | that Ms. Durand made no complaints of pain or discomfort
21 | during the trip. Ms. Vantine testified that Ms. Durand was
22 | able to get in and out of the kayak, and that Ms. Durand had
23 | no problems keeping up with the other kayakers on the trip.
24 | Ms. Vantine also observed Ms. Durand running at the end of the
25 | trip so she could catch the ferry to leave the area.

1 Special Agent Joseph Boynton conducted video surveillance
2 of Ms. Durand while she was on the trip. Mr. Boynton videoed
3 Ms. Durand paddling, setting up her tent, squatting, bending,
4 and lifting, and carrying kayaks with other persons on the
5 trip.

6 Ms. Vantine testified that the kayaks weighed
7 approximately 100 pounds when loaded, and 60 to 70 pounds when
8 empty. The surveillance video also depicts Ms. Durand
9 attempting to Judo chop or Karate chop an object that another
10 person held.

11 In September of 2015, Ms. Durand completed a current
12 Capability Evaluation Form for the Department of
13 Labor/Workers' Compensation program. In that form, Ms. Durand
14 reports physical limitations that were not observed on the
15 kayak trip, and Ms. Durand stated on the evaluation form that
16 she has chronic pain, back pain, leg pain and weakness, and
17 sciatic nerve pain.

18 Ms. Durand described her injuries during 2015 as having
19 been "getting somewhat worse." Ms. Durand described her life
20 as "totality sedentary," Ms. Durand stated each day that she
21 could stand for only 30 minutes, sit for 30 minutes, walk for
22 120 minutes, kneel for 15 minutes, squat for zero minutes,
23 climb for zero minutes, bend for zero minutes, and read for
24 ten minutes.

25 The government's evidence with respect to Count II also

1 includes the stipulation in Document 54. The parties
2 stipulated in Document 54 that the government proved beyond a
3 reasonable doubt that Ms. Durand had caused interstate wire
4 communication to occur by way of wire deposits, phone calls,
5 faxes, and other electronic submissions to and from Great
6 Falls, Montana, and to and from Denver, Colorado, and
7 elsewhere.

8 Count III. With respect to Count III, the government's
9 required to prove three elements:

10 Number 1, that Ms. Durand knowingly submitted a false
11 claim against the United States, an agency of the United
12 States;

13 Number 2, that the claim was based on false or fraudulent
14 material facts;

15 and, 3, that Ms. Durand acted intentionally and knew the
16 claim was false and fraudulent.

17 The government's evidence established that between on or
18 about February 25th, 2013, and July 26th, 2014, that Ms.
19 Durand, while residing in Montana and elsewhere, knowingly
20 made materially false and fraudulent claims to the Department
21 of Labor/Office of Workers' Compensation program, knowing the
22 claims to be false.

23 Ms. Durand falsely claimed to be unable to work for the
24 United States Postal Service in any capacity. The
25 government's evidence with respect to Count III included the

1 same evidence as discussed previously with respect to Count I
2 and Count II.

3 With respect to Count IV, the government was required
4 to prove three elements:

5 Number one, that Ms. Durand knowingly stole money with
6 the intention of depriving the owner of the use and benefit of
7 the money;

8 Two, that the money belonged to the United States;

9 and, three, that the value of the money was more than
10 \$1,000.

11 The government's evidence established that beginning on
12 or about February 25th, 2013, and continuing until on or about
13 July 26th, 2014, Ms. Durand, while residing in Montana and
14 elsewhere, knowingly stole money belonging to the United
15 States at a value in excess of \$1,000.

16 Ms. Durand received compensation for wages, medical
17 expenses, and travel vouchers from the Department of
18 Labor/Office of Workers' Compensation programs knowing that
19 she was not entitled to receive such compensation.

20 The government's evidence with respect to Count IV
21 included the same evidence discussed previously with respect
22 to Count I, Count II, and Count III.

23 Having considered all of the evidence presented in this
24 matter, the Court finds that Ms. Durand is guilty beyond a
25 reasonable doubt of having made a false statement related to

1 the Federal Workers' Compensation benefits, as charged in
2 Count I of the Indictment.

3 The Court finds Ms. Durand is guilty beyond a reasonable
4 doubt of wire fraud, as charged in Count II of the Indictment.

5 The Court finds that Ms. Durand is guilty beyond a
6 reasonable doubt of having made a false or fraudulent claim
7 relating to Federal Workers' Compensation benefits, as charged
8 in Count III of the indictment.

9 And the Court finds that Ms. Durand is guilty beyond a
10 reasonable doubt of theft of government property, as charged
11 in Count IV of the Indictment.

12 Given that Ms. Durand has been convicted of wire fraud,
13 as charged in Count II of the Indictment, Ms. Durand must
14 forfeit to the United States any property, real or personal,
15 that constitutes or was derived from proceeds traceable to
16 that offense.

17 I'm not entirely clear as to the amount of the
18 forfeiture, and what I'm going to do to clarify that is ask
19 the parties, within ten days, to present a stipulation, if
20 possible, of the amount of money subject to forfeiture.

21 If that's not possible, then to submit your own joint
22 positions regarding the forfeiture allegation, not to exceed
23 ten pages in length, within ten days of today's date.

24 MR. WELDON: Yes, Your Honor.

25 THE COURT: All right. Anything else to address,

1 Mr. Weldon?

2 MR. WELDON: No, Your Honor.

3 THE COURT: Mr. Arvanetes?

4 MR. ARVANETES: No, Your Honor.

5 THE COURT: All right. So, Ms. Durand, I'm going to
6 set the sentencing in this matter for November 30th of 2017,
7 at 1:30 p.m., at this courthouse in Great Falls.

8 Ms. Durand is not in custody, Mr. Weldon, what's the
9 government's position?

10 MR. WELDON: Your Honor, the United States is not
11 moving for detention of Ms. Durand.

12 THE COURT: Ms. Durand, I'm not going to require you
13 to be in custody. I'll allow you to be released under the
14 conditions imposed by Judge Johnston when you appear before
15 him.

16 THE DEFENDANT: (Nods head affirmatively)

17 THE COURT: U.S. Probation will be in contact with
18 you, and Mr. Arvanetes can help with those arrangements.

19 MR. ARVANETES: (Nods head affirmatively)

20 THE COURT: All right. Anything else, counsel?

21 MR. WELDON: No, Your Honor. Thank you for your
22 time.

23 THE COURT: All right. It's been a very long week
24 in trial, and I appreciate your work during the course of the
25 trial.

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MR. ARVANETES: Thank you, Your Honor.

(Proceedings concluded at 4:26 p.m.)

CERTIFICATE

I, Julie L. DeLong, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my knowledge, skill, and ability.

/s/ Julie L. DeLong
Julie L. DeLong

02/05/2018
Date